

## § 320.20

file with the hearings officer an election to participate in the appeal. A claimant who fails to file an election in the time prescribed shall be barred from further participation in the appeal and shall forfeit any right of review as provided for in this part.

[56 FR 65680, Dec. 18, 1991]

### § 320.20 Powers of hearings officer.

In the development of an appeal, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations.

### § 320.22 Notice of hearing.

(a) *Notification of parties.* In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearings officer shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(b) *Notice of objection.* A party to the proceeding may object to the time and place of the hearing, or as to the stated issues to be resolved, by filing a written notice of objection with the hearings officer. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(c) *Ruling on objection.* The hearings officer shall rule on any objection timely filed by a party under this section and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand

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the issues to be resolved at the hearing.

(d) *Failure to appear or to file objection.* If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(e) *Rescheduling the hearing.* If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

[53 FR 2488, Jan. 28, 1988]

### § 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties.

(b) *Compilation of evidence.* Any party, or his duly authorized representative, shall be afforded full opportunity to present further evidence upon any controversial question of fact, orally or in writing, or by means of exhibits; to examine and cross-examine witnesses, and to present argument. If, in the judgment of the hearings officer, evidence not offered is available and relevant, and is material to the merits of the appeal, the hearings officer shall